

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:13CR3016
	)	
v.	)	
	)	
GUSTAVO ARMENTA TRUJILLO,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
	)	

Because it is undisputed that the defendant was convicted of a prior felony involving the delivery or intent to deliver a controlled substance and because the defendant was convicted of a prior burglary (filing no. [43](#) at ¶¶ 40, 49 (Presentence Report)), the defendant is not entitled to relief under *Johnson*. In other words, the “residual clause” was not used to enhance the defendant’s sentence. I will therefore deny the motion with prejudice.

I will not issue a certificate of appealability. The defendant “must make a substantial showing of the denial of a constitutional right” to obtain such a certificate; that is, “a showing that [the] issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” [\*Garrett v. United States\*](#), 211 F.3d 1075, 1076 (8th Cir. 2000) (citations omitted) (denying a certificate regarding a § 2255 motion for, among other reasons, because

the issue raised was clearly foreclosed by a prior decision of the Court of Appeals). The defendant has not done so.

IT IS ORDERED that:

1. The Motion to Vacate under 28 U.S.C. § 2255 (filing no. [59](#)) is denied and dismissed with prejudice.
2. No certificate of appealability will be issued.
3. A separate judgment will be issued.

DATED this 20<sup>th</sup> day of April, 2016.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge